

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA        )  
                                    )  
                                   )       CRIMINAL ACTION NO.  
v.                                )  
                                   )       2:17cr221-MHT  
                                   )  
ROGER DALE WALKER              )

OPINION AND ORDER

This cause is before the court on the motion to continue made by defendant Roger Dale Walker on August 30, 2017. For the reasons set forth below, the court finds that jury selection and trial, now set for September 5, 2017, should be continued pursuant to 18 U.S.C. § 3161(h)(7).

While the granting of a continuance is left to the sound discretion of the trial judge, United States v. Stitzer, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making

public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice," § 3161(h)(7)(B)(i), or "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." § 3161(h)(7)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Walker in a speedy trial. On August 30, a grand jury issued a superseding indictment against Walker. On August 31, at a

conference call to discuss Walker's motion to continue, the government also informed the court that Walker's co-defendant plans to enter a guilty plea. In light of these two developments, the current September 5 trial date does not provide enough time for counsel for Walker to prepare for jury selection and trial. A continuance is warranted and necessary to allow counsel for Walker to prepare adequately and effectively for the jury selection and trial in this case.

The government does not object to a continuance.

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Accordingly, it is ORDERED as follows:

(1) The motion for continuance of defendant Roger Dale Walker (doc. no. 32) is granted.

(2) The jury selection and trial, now set for September 5, 2017, are reset for November 6, 2017, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church

Street, Montgomery, Alabama.

DONE, this the 31st day of August, 2017.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE